

## Arlington Town Meeting — Substitute Motion

### ARTICLE NO. 32

Dated: April 30, 2022

I, Mark Rosenthal, do hereby submit the following Substitute Motion to replace the Redevelopment Board's main motion under Article 32:

VOTED: That Zoning Bylaw Section 3.2.3 be and hereby is amended as follows (additions are underlined and removals are in strikeout):

The Board of Appeals shall adopt rules and regulations for the administration of its powers and shall file a copy of such regulations with the Town Clerk. The Board's regulations shall include rules for hiring outside consultants.

A. The Chair of the Board of Appeals, or in their absence the Acting Chair, may administer oaths, but must do so for the applicant and those acting on his behalf at hearings involving G.L. c. 40B, ~~summon witnesses and call for the production of papers. All hearings shall be open to the public. The Board of Appeals and all permit and special permit granting authorities shall hold hearings and render decisions in accordance with the applicable time limitations as set forth in G.L. c. 40A §§ 9 and 15.~~

The Board of Appeals shall cause to be made a detailed record of its proceedings which in the case of G.L. c. 40B hearings shall require that all testimony be electronically recorded, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions. ~~\_, copies of all of which shall be filed within 14 days in the office of the Town Clerk and the office of the Arlington Redevelopment Board and shall be a public record, and notice or decisions shall be mailed immediately to the petitioner and to the owners of all property deemed by the Board of Appeals to be affected thereby, including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent local tax list, and to every person present at the hearing who requests that notice be sent to them and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the Board of Appeals shall issue to the land owner a notice, certified by the chair or clerk, containing~~

~~the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance or permit shall take effect until such notice is recorded in the Middlesex County Registry of Deeds.~~

~~The fee for recording such notice shall be paid by the owner and the notice shall be indexed in the grantor index under the name of the owner of record.~~

~~The concurring vote of all members of the Board shall be necessary to reverse any order or decision of any administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this Bylaw, or to effect any variance in the application of this Bylaw.~~

**Comment:**

This substitute motion is identical to the ARB's recommended vote, with the exception that it maintains necessary regulations in the Zoning Bylaw related to Massachusetts General Law Chapter 40B. The language requiring testimony under oath at hearings involving G.L. c. 40B has been modified to clarify that this is intended to apply only to the 40B applicant and those acting on his behalf.

By maintaining the requirements for the testimony of 40B hearings to be under oath, and the proceedings electronically recorded, the town will be better able to protect itself from future appeals, such as the current appeal of the Mugar 40B permit. Keeping the requirements in the zoning bylaw, rather than allowing them to possibly be included in the ZBA's rules will ensure that 40B proponents will not be able to pressure the ZBA to waive the requirements.

Respectfully submitted,

Mark Rosenthal

TMM, Pct. 14